

## REMARKS

### I. Introduction

Claims **1, 6-23, 25-29, 34-36, 38-39, 41, 56-57, 61, 63, 69-80, 97, and 99-118** are currently pending in the present application. Claims **1, 29, 38-39, 41, 56-57, 61, 63, 69-80, and 99-116** are independent.

Claims **116-118** have been withdrawn from consideration by the Examiner pursuant to a Restriction Requirement imposed in the Final Office Action mailed on July 6, 2006 as Part of Paper No./Mail Date 20060621 (hereinafter the “Final Office Action”).

Applicants respectfully note that Examiner’s Office Action Summary on pg. 1 of the Final Office Action neglects to address claims **115-118**, which the examiner acknowledges have been entered (See, Final Office Action, pg. 2, bullet three, line 5). Claim **115** should be appropriately indicated as pending and rejected, while claims **116-118** should be appropriately noted as being withdrawn from consideration (should the Examiner’s Restriction Requirement be maintained as final, upon reconsideration as requested herein).

All claims remaining for consideration (claims **1, 6-23, 25-29, 34-36, 38-39, 41, 56-57, 61, 63, 69-80, 97, and 99-115**) stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 6,112,186 (hereinafter “Bergh”) in view of U.S. Patent No. 5,227,874 (hereinafter “Von Kohorn”), in further view of U.S. Patent No. 6,876,983 (hereinafter “Goddard”), in further view of U.S. Patent No. 6,598,026 (hereinafter “Ojha”).

Upon entry of this amendment, which is respectfully requested pursuant to 37 C.F.R. §1.116(b) and MPEP §§714.12, 714.13, the specification will be amended in accordance with 35 U.S.C. §120 and 37 C.F.R. §1.78 to clarify the claim of priority. Applicants note that because the present application was filed prior to November 29, 2000 (*i.e.*, March 31, 2000), that the time periods of 37 C.F.R. §1.78 do not apply. See 37 C.F.R. §1.78. No new matter is introduced by this amendment, and the amendment is presented solely to advance prosecution by placing the pending claims in condition for allowance.

## II. Priority

Applicants thank the Examiner for researching the priority chain for the present application. Unfortunately, due to an error in the Patent Application Information Retrieval (PAIR) system, the full priority chain emanating from U.S. Application Serial No. 09/337,906 (U.S. Patent No. 6,754,636) has not been appropriately represented by PAIR. The “Cross-Reference to Related Applications” section of U.S. Application Serial No. 09/337,906 (U.S. Patent No. 6,754,636) clearly reflects the appropriate priority chain, which, subsequent to the amendment provided herein, is substantially duplicated in this application.

Applicants respectfully note that the “brand indifference” concepts of the pending claims find plentiful support and description throughout at least the specification of U.S. Patent Application Serial No. 09/190,744 (a parent of U.S. Patent No. 6,754,636), filed on November 28, 1998. While such support is replete throughout the above-mentioned priority document, Applicants direct the Examiner’s attention, for exemplary purposes, to pg. 68, line 11 to pg. 69, line 6, thereof.

## III. The Examiner’s Rejections - 35 U.S.C. §103(a) – Bergh, Von Kohorn, Goddard, Ojha

All claims under consideration stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Bergh in view of Von Kohorn, in further view of Goddard, in further view of Ojha. Applicants note that the filing date of U.S. Patent Application Serial No. 09/190,744 (November 28, 1998) pre-dates the earliest effective filing date of both Goddard (December 2, 1998) and Ojha (January 25, 1999). To the extent the pending claims are supported by the written description and specification of U.S. Patent Application Serial No. 09/190,744, such claims are therefore entitled to a priority date of November 2, 1998, which pre-dates both Goddard and Ojha.

Accordingly, neither Goddard nor Ojha are valid prior art references, rendering the outstanding §103(a) rejections invalid. The claims remaining under consideration should therefore be allowed.

#### IV. Restriction Requirement

Claims **116-118** are subject to a Restriction Requirement imposed by the Examiner in the Final Office Action.

Applicants provisionally elect to prosecute the invention(s) as previously claimed (e.g., prior to the presentation of claims **116-118**), pursuant to 37 C.F.R. §1.145. This provisional election is made with traverse. That is, Applicants respectfully disagree with the Examiner's proposed restriction.

Applicants respectfully note, for example, that the Examiner has not even attempted to set forth a *prima facie* case for restriction. The Examiner merely paraphrases claims **116-118** to “show” that such claims are distinct from the other pending claims. No reasons or explanation for such a determination have been provided by the Examiner. Accordingly, the Examiner has not provided Applicants with enough information with which a reasoned response or argument may be formed.

At least for these reasons, Applicants respectfully request that the Restriction Requirement be set forth in detail, as required, or that it be withdrawn.

Applicants hereby respectfully request reconsideration of the restriction requirement pursuant to 37 C.F.R. §§1.143, 1.145.

#### V. Premature Finality

Applicants note that the finality of the Final Office Action may be premature. As Applicants must be afforded an opportunity to challenge and/or obtain reconsideration of the Restriction Requirement pursuant to 37 C.F.R. §§1.143, 1.145, for example, the finality of the Final Office Action prevents Applicants from realizing such requisite reconsideration.

Applicants therefore respectfully request that the finality of the Final Office Action be withdrawn so that the outstanding Restriction Requirement may be appropriately challenged and/or reconsidered, as required by law.

**VI. Conclusion**

At least for the foregoing reasons, it is submitted that all pending claims are now in condition for allowance, *or in better form for appeal*, and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application or the cited reference, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number 203-461-7017 or via electronic mail at [cfincham@walkerdigital.com](mailto:cfincham@walkerdigital.com), at the Examiner's convenience.

**VII. Petition for Extension of Time to Respond**

While no fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

July 14, 2006

Date

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